



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 15 2000

MEMORANDUM FOR CHERYL HARSKOWITCH
DIRECTOR, TAXPAYER ACCOUNT OPERATIONS
C:TA:TAO

FROM: Carol A. Campbell *CC*
Technical Advisor to the Counsel to the National Taxpayer
Advocate
CC:NTA

SUBJECT: [REDACTED]

By facsimile dated October 25, 1999, Janey Tabor, the Ohio Taxpayer Advocate, requested review of an opinion issued by Associate District Counsel, Cleveland regarding the above named taxpayer. We responded verbally to Ms. Tabor that based on the information provided in the file, the opinion issued by district counsel appears to be correct. Ms. Tabor subsequently submitted additional information and requested that we review the case again in light of the additional information provided. This memorandum provides our views regarding this case.

For a number of years this taxpayer has raised issues regarding the validity of the tax assessments against him and the effect of his bankruptcy cases on these assessments and the related collection statutes of limitation, specifically for the [REDACTED] and [REDACTED] income tax years. ¹ For purposes of this memorandum, the only issue is whether the waivers of the statute of limitations on collection signed by the taxpayer and received by the Service on [REDACTED] and [REDACTED] were valid extensions of the limitations periods. ² The answer to this question depends upon whether the taxpayer had a valid installment agreement at the time the statute extensions were requested by the Service and entered into by the taxpayer. If the taxpayer had a valid installment agreement at the time the waiver

¹ The taxpayer also had individual income tax liabilities for the [REDACTED] tax year and joint liabilities for [REDACTED]

² The periods of limitation for the [REDACTED] and [REDACTED] income tax years were originally extended by the taxpayer's three bankruptcy filings and the subsequent statutory change of the collection period of limitations from six to ten years in 1990.

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requests were made, then the solicited waivers are invalid and failed to extend the collection statute of limitations.

The taxpayer is asserting that there was a valid installment agreement at the time the waivers were signed. The taxpayer's argument is buttressed by the fact that the Service was apparently the original source of this determination. The taxpayer received a letter dated November 11, 1998, signed by the Taxpayer Advocate, informing him that the time for collecting the taxes that were being paid pursuant to the installment agreement had expired, that the extension requested was in error, that the Service would take no further action to collect these taxes, and that his claim for refund was allowed.³ This letter was sent as part of the CSED recovery project. With the assistance of district counsel, it was subsequently determined that the November 11, 1998, letter was in error and that the collection waivers were validly executed. The taxpayers were sent a letter dated January 5, 1999, informing them that the collection statutes had been correctly extended.

As the file indicates, the Service made a number of errors in this case, but those errors do not negate the taxpayer's liability for validly assessed taxes, if the statute of limitations for collection remains open. We believe that district counsel correctly determined that the statute was validly extended by the taxpayer's waivers, even though the opinion does not directly address the possibility that the waivers could be invalid based on a preexisting installment agreement. We have reviewed the documents provided and determined that these documents do not support a determination that a valid installment agreement existed at the time the first waiver was signed or that such an agreement was created prior to the installment agreement that commenced [REDACTED]

The taxpayers made \$ [REDACTED] monthly payments on their outstanding liabilities between [REDACTED]. In [REDACTED], the Service levied on [REDACTED] wages. In order to obtain a release of the levy, the taxpayers signed collection waivers and forwarded these documents to the Service on or about November 22, 1994. The waivers extended the collection statute for all tax years until [REDACTED]. On [REDACTED] the taxpayers requested an installment agreement. The installment agreement was signed by the Service on [REDACTED] and it required that beginning [REDACTED] the taxpayers would make payments of \$ [REDACTED] per month until [REDACTED] when payments increased to \$ [REDACTED] per month. In conjunction with the installment agreement, the taxpayers

³ This was a form letter that does not identify any particular tax periods, type of tax, amount of liability, dates for the installment agreement or collection statute expiration dates. It also does not identify if one or both waivers were determined to be invalid. In other words, it provides very little taxpayer specific information, but simply concludes that the collection statute has expired, and that the taxpayer's claim for refund has been allowed.

also signed a waiver extending the collection statute for the relevant tax periods to [REDACTED]

The taxpayers defaulted on the installment agreement in [REDACTED]

There is no information in the file to support a determination that there was a preexisting installment agreement at the time either collection waiver was signed. Although the taxpayer did make some monthly payments on his tax liabilities prior to signing the first waiver, there is nothing to suggest that the Service had entered into an installment agreement (formal, informal, or manually monitored), with the taxpayer. As a matter of fact, in the taxpayer's November 14, 1994, request for a Taxpayer Assistance Order it is stated that "[i]n an effort to reduce the outstanding liability for the valid assessments, the taxpayer submitted a 433A and as a result began paying [REDACTED] dollars (\$[REDACTED]) per month from [REDACTED] through [REDACTED] for a total amount of [REDACTED] dollars (\$[REDACTED]). Then the Revenue Officer stated that there was no payment plan and could be none unless a waiver was signed for [REDACTED] and [REDACTED]" Thus, it appears that in [REDACTED], the taxpayer was aware that there was no installment agreement. By itself, the submission of payments by a taxpayer does not create an installment agreement or the inference of an installment agreement with the Service.

As evidenced by the letters from the taxpayer's representative dated October 11 and 24, 1994, to the revenue officer assigned to this case, the Service continued to try to collect the tax. If the taxpayer had a valid installment agreement with the Service, collection actions should have been abated. It also would be reasonable to expect the taxpayer's correspondence to address such an agreement, if collection action were in violation of that agreement. An installment agreement is not addressed in either letter. More than anything else, the pattern of payments by this taxpayer seems to be directed at forestalling collection action, not with satisfying the tax liability. Payments begin when there appears to be an immediate threat of enforced collection and cease or decrease when the threat is removed. Furthermore, since the taxpayer's representative was asserting that his client did not owe the tax and there were no payments between [REDACTED] and [REDACTED], it is doubtful that even the taxpayer believed that there was an installment agreement.⁴ Accordingly, the facts in this file do not provide sufficient support for an argument that when the taxpayer signed the waiver extending the collection statute of limitations to [REDACTED], on [REDACTED]

⁴ The statement of the taxpayer's representative in the November 19, 1999, letter indicating that an installment agreement was ongoing from [REDACTED] through [REDACTED] but was not reduced to writing because the IRS was monitoring the agreement to ensure that the taxpayer was paying is questionable at best. The statement was not contemporaneously made and is inconsistent with the statement made in support of the November 14, 1994, request for a Taxpayer Assistance Order.

██████████ (after the Service levied on his wages), that the Service had previously entered into an installment agreement with this taxpayer which would legally invalidate the subsequently signed waiver.⁵

The same is true for the waiver signed on ██████████. Although the taxpayer made ██████████ payments between ██████████ or ██████████ (██████████), these payments do not appear to have been made as part of an installment agreement, but rather as indicated in the November 1994 TAO application by the taxpayer's representative as "a reasonable solution for the amount which has been correctly assessed and owed" ... "until this matter is resolved either by negotiation with District Counsel or in Court." It appears that the Service did not actually enter into an installment agreement with this taxpayer until ██████████, at about the same time that the second waiver was signed. Thus, this waiver was in conjunction with an installment agreement and is also valid. See I.R.C. § 6502(a)(2).

Unless factual information, more substantial than what is present in this file is uncovered to support the existence of an installment agreement at the time either or both of the waivers were signed, we have to concur in the opinion provided by district counsel. This taxpayer appears to have expended significant effort to avoid the payment of these liabilities. In none of the taxpayer's correspondence predating the November 11, 1998, correspondence from the CSED recovery project did the taxpayer indicate that he had entered into an installment agreement with the Service. The taxpayer raised a myriad of arguments regarding the expiration of the statute of limitations on collection for these years, but never did he assert that the Service was in violation of an agreed payment plan. Such an assertion after the receipt of a letter from the Service indicating the existence of an installment agreement, without more, is an insufficient basis for establishing the existence of such an agreement before July 1995.

If you have questions or need additional information, please advise.

⁵ Even though the taxpayer argues that this extension was signed under duress, ~~due to intimidation and unfair pressure, we agree with district counsel that a threat to do~~ that which one is legally authorized to do (in this case, levy the taxpayer's wages) does not constitute duress.